

Europe is not a Story

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Maximilian Steinbeis Sa 29 Apr 2017

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The week ahead is perhaps the last in which we can still speak with some confidence of the European Union, as we know it, in the present-tense indicative. At its end we will know whether Marine Le Pen will rule in France, and if that happens, our talk about Europe will likely take on a sad past-tense tinge. But until then we still have time to use the future tense in our talk about European integration. The great European narrative is not told to the end, and whether it turns out to be a story of decay or success yet remains to be seen.

Which does not necessarily mean that we should – or can – keep using the same narrative as in the past 60 years, as if there had never been a Euro or refugee crisis, a Brexit referendum, Marine Le Pen. Do we need a new narrative for Europe? This was the subject of an outstanding conference at the Friedrich Ebert Foundation in Berlin, organized by Claudio Franzius, Franz Mayer and Jürgen Neyer, which I had the honour to attend yesterday. Conclusion: none of the established narratives of Europe is unequivocally accepted in the field of European law and political science any more.

This is true not least for the *Rechtsgemeinschaft* story, first told by the first Commission President (and law professor) Walter Hallstein and guiding star and source of authority for generations of German scholars and practitioners of European law: Europe united and integrated, not by force, but by law! This, according to Armin von Bogdandy, is simply not true any more. To keep telling this story means blinding oneself to the blatant force brought down on the Greeks during the Eurocrisis, as well as to the rash that befalls many British the minute someone mentions the word "ECJ". Europe is a political and no longer just a legal community, however hard this is to accept for German jurists. This thesis, presented by Bogdandy without undue restraint, did not remain unquestioned but in essence unrefuted.

A whole different question is whether narrating Europe is a good thing in the first place. The literary scientist Albrecht Koschorke provided the necessary narration-theory input to answer this question, and he, for one, strongly advised against it. Narratives, according to Koschorke, are successful when they provide an interpretative scheme that arranges the individual's experience into meaningful patterns. Sharing this scheme constitutes a collective we that provides their members with security and recognition. The less plausible the liberal narrative of modernity as progress and life improvement for everyone appears – "what do liberals have to say about mass migration?" – the more will narratives become a tool of delimitation, which is not what liberals want, nor Europe. Koschorke: "In the market of stories, Europe has little to gain and much to lose."

Orbán in Strasbourg

The narrative as a domain of right-wing populists – a prime example of this could be observed in the EU Parliament this week. "I have come here to defend my country," the leader of the Magyars Viktor Orbán said with a stony face to the parliamentarians who criticized him for the attack on the CEU, the draft law on NGOs, the mistreatment of asylum seekers and the manipulative "Stop Brussels!" popular consultation. Hungary, said Orbán, is "a proud country", the Hungarians "never give up the fight". Whatever the EU does will feed this narrative and make it stronger. In reaction to the CEU law the EU Commission has now launched another infringement procedure against Hungary. What is to be expected from this and what else the EU can do to bring Hungary back to the path of the rule of law – not much – is explained by GÁBOR HALMAI in a post I will upload later today.

Hungary and Poland are symptoms of a comprehensive crisis of the rule of law in the EU, and with it comes a crisis of confidence: the law depends on the confidence that it is generally followed, or else it will no longer be followed. Does the crisis of confidence run so deep that only a clear break with the EU, as it stands, will do? The already mentioned ARMIN OF BOGDANDY [asks this question, and his answer is: no!](#) Rather trust in the EU eventually reigning in Orbán and Kaczynski by legal means in one way or another than throw these legal

means out of the window altogether.

How legal populism and constitutional justice interact is the subject of our new online symposium on Verfassungsblog, jointly with ICONnect, which will run on into the coming week. After the [introduction](#) of MICHAELA HAILBRONNER and DAVID LANDAU, JAN-WERNER MÜLLER starts the debate with the thesis that [populism and constitutionalism are not necessarily a contradiction in terms](#) as even populists find constitutional law and institutions occasionally useful as long as they serve their political aims. ANDREW ARATO compares how [different populist regimes come to terms with their constitutional courts](#), and ROSALIND DIXON explains the [difference between populist and transformative constitutionalism](#). ALON HAREL describes how the [Israeli Supreme Court](#) is struggling against the populist threat and temptation, and OR BASSOK does the same with respect to the [American Supreme Court](#).

In Spain, the Constitutional Court, not altogether voluntarily, is dealing with Catalan separatism in a way which JOAQUÍN URÍAS [finds catastrophic](#). In a recent decision it finds already the statement of the Catalan Parliament to support the idea of an independent referendum unconstitutional. According to Urías, the Court relinquished protection of the constitution as a guarantor of free political debate to become a regulator of political speech.

Meanwhile in Pakistan, the Constitutional Court has made a remarkable step: While the Court majority shied away from downright impeaching of the corrupt Prime Minister Nawaz Sharif, the mere fact that such a procedure could happen at all establishes the court as guardian of the constitution. ADEEL HUSSAIN [explains how this came about as well as the role Islam plays in this story](#).

In Ireland, at last, the Citizens Assembly has voted against repealing the notorious 8th constitutional amendment which bans abortion even in cases of extreme hardship for the mother. Instead the article is to be reformed – a [disappointment](#), finds FRANZISKA BRACHTHÄUSER.

Elsewhere

VLADISLAVA STOYANOVA analyzes a recent judgment of the Strasbourg Court of Human Rights, according to which the [plight of refugees in Greece amounts to forced labor](#),

MICHAL TAMIR reassures us that the latest appointments to the Israeli Supreme Court by the right-wing government turn it perhaps into a [less extremely conservative body of jurisdiction as the government might hope](#), and

OLIVIER BEAUD takes a deep look into the [legal framework of the French presidential elections](#).

So much for this week. Take a deep breath, have fun and enjoy Europe while it is still there!

All the best,

Max Steinbeis

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